

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**ERIC LEE PROCTOR,**

**Plaintiff,**

**v.**

**RICK WHITTEN, Warden,**

**Defendant.**

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**Case No. CIV-20-286-G**

**ORDER**

This matter is before the Court for review of the Report and Recommendation (“R. & R.”) (Doc. No. 10) issued by United States Magistrate Judge Suzanne Mitchell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Plaintiff, a state prisoner appearing pro se, brought this action under 42 U.S.C. § 1983, alleging a violation of his constitutional rights. On May 18, 2020, Plaintiff filed a document titled “Motion to Withdraw,” in which he requested that the Court “withdraw his case” without prejudice and “return [the] full filing fee.” Pl.’s Mot. (Doc. No. 9) at 1.

On May 27, 2020, Judge Mitchell entered an R. & R. recommending that the Court construe Plaintiff’s filing as a motion for dismissal and additional court action under Rule 41(a)(2) of the Federal Rules of Civil Procedure. Judge Mitchell recommends that the Court dismiss the action without prejudice and return the \$350 filing fee to Plaintiff. *See* R. & R. at 3. Judge Mitchell informed Plaintiff of his right to object to the R. & R. and the consequences of failing to do so. *See id.* at 3-4. Plaintiff has not filed a written objection to the R. & R. within the allotted time period, nor has he requested additional time to object.

Finding that Plaintiff has waived further review of all issues addressed in the R. & R., *see Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991), the Court adopts the R. & R. in its entirety, as though fully set forth herein.

IT IS THEREFORE ORDERED that the Report and Recommendation (Doc. No. 10) is ADOPTED, Plaintiff's Motion to Withdraw (Doc. No. 9) is GRANTED, and this matter is DISMISSED without prejudice. *See* Fed. R. Civ. P. 41(a)(2). Plaintiff's Motion to Refund Filing Fee (Doc. No. 13) is DENIED as moot.

IT IS FURTHER ORDERED that the Clerk of the Court shall refund the \$350 filing fee in this matter to Plaintiff.

A separate judgment shall be entered.

IT IS SO ORDERED this 9th day of July, 2020.

  
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CHARLES B. GOODWIN  
United States District Judge